IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

1. S.B. Criminal Appeal No.218/2004

Ram Bharos S/o Shri Ghasi Lal Mali & Others
Versus
The State of Rajasthan through its Public Prosecutor

AND

2. S.B. Criminal Revision Petition No.446/2004

Birdhi Lal S/o Nanda Ji
Versus
State of Rajasthan & Others

Date of Order ::: 20th April, 2007

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Arvind Kumar Gupta, with
Shri Inder Raj Saini
Shri Rinesh Gupta and
Shri J.R. Bijrania, Counsel for Appellants
Shri Ravi Sharma Counsel for the
petitioner in Revision Petition
Shri Arun Sharma and
Smt. Nirmala Sharma, P.P., for respondent State

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//Reportable//

By the Court:-

The Additional Sessions Judge (Fast Track) No.2, Bundi, vide its judgment and order dated 30th January, 2004, in Sessions Case No.81/2001, convicted and sentenced the accused-appellants – (1) Ram Bharosh

S/o Ghasi Lal Mali, (2) Ram Charan S/o Shri Ghasi Lal Mali, (3) Prabhu Lal S/o Shri Panna Mali, (4) Bhola Shankar S/o Shri Govinda Mali, (5) Ghasi Lal S/o Shri Panna Lal Mali and (6) Nand Lal @ Nanda S/o Shri Keshri Lal Teli, as under:-

Under Sections	***Sentence of Imprisonment***
148, IPC	To undergo 1 year simple imprisonment and a fine of Rs.500/-; in default of payment of fine, to further undergo 1 month additional simple imprisonment
307/149, IPC	To undergo 7 years simple imprisonment and a fine of Rs.1000/-; in default of payment of fine, to further undergo 1 month additional simple imprisonment
323/149, IPC	To pay a fine of Rs.500/-; in default of payment of fine, to further undergo 15 days additional simple imprisonment
341, IPC	To pay a fine of Rs.500/-; in default of payment of fine, to further undergo 15 days additional simple imprisonment

All the sentences were ordered to run concurrently.

Briefly stated the facts of the case are that a first information report No.309/1996 (Exhibit P-27) was registered at Police Station Taleda, District Bundi, under Sections 147, 148, 149, 341, 307/323, IPC and under section 27 of the Arms Act, on the basis of

'parcha bayan' of injured Rameshwar (Exhibit P-1) dated 29.9.1996 recorded at General Hospital, Bundi, by the Station House Officer, Kotwali - Bundi. It was stated by the injured that at about 5.00 PM he was going on his scooter with his brother Birdhilal from Taleda and when he reached near Dhora, the accused-persons (15 in number) stopped them. Ram Bharos fired from their back-side thereby he sustained injury at his back. Ram Charan also fired his gun and his brother sustained injury at his leg. Prabhu inflicted a 'kulhadi' blow thereby he sustained head injury. Ghasi also inflicted 'lathi' blow thereby he sustained an injury on his hand. All the accused-persons inflicted injuries on his person and on the person of his brother.

The police investigated the matter and filed charge-sheet against 17 persons. The trial court framed charge against accused Ram Bharos and Ram Charan for the offence under Sections 147, 148, 307/149, 323/149, 341, IPC, and Section 3/25 of the Arms Act, and against remaining accused-persons under Sections 147, 148, 307/149, 323/149 and 341, IPC. The accused-persons denied the charge and claimed to be tried.

The prosecution examined 17 witnesses and

exhibited 64 documents (Exhibit P-1 to Exhibit P-64). The statements of accused-persons were recorded under Section 313, Cr.P.C., wherein they stated their innocence and further that they have been implicated falsely in the case. In defence, the statement of DW-1 Shrinath Bansal and DW-2 Ganga Sahai were recorded and documentary evidence (Exhibit D-1 to Exhibit D-6) was also filed.

The learned trial court, after considering the entire evidence on the record, acquitted 11 accused-persons, and convicted and sentenced the six appellants, as mentioned above.

Being aggrieved with the same, the accused-appellants preferred S.B. Criminal Appeal No.218/2004 and injured Birdhilal preferred S.B. Criminal Revision Petition No.446/2004 against 11 accused-persons, who were acquitted.

The learned counsel for the accused-appellant, Shri A.K. Gupta, contended that as per the statements of PW-1 Rameshwar, PW-2 Birdhilal, PW-3 Smt. Shantibai and PW-4 Mohanlal, it is clear that initially a report was lodged by Mohanlal at Police Station Taleda but the said original report has not been produced in the case by the prosecution. The present F.I.R. (Exhibit P-27) has been registered on the basis of 'parcha

bayan' (Exhibit P-1) of injured Rameshwar recorded by the S.H.O., Kotwali - Bundi. The prosecution has deliberately concealed the original F.I.R., and has not come with clean hands before the Court. The present F.I.R. is ante-dated and false allegations have been alleged in it, therefore, the entire prosecution case becomes doubtful and the accused-persons are entitled to get the benefit of the said doubt. It is further contended that there was no occasion for the accused-persons to go at the spot where the incident took place. It was not on the way. He referred the statements of PW-1 Rameshwar and PW-2 Birdhilal in support of his contention that the way was about one kilometer away from the place of incident and the present case has falsely been lodged against the accused-persons by the complainant party.

It is further contended on behalf of the accused that the statements of the prosecution witnesses, particularly the injured eye-witnesses PW-1 Rameshwar and PW-2 Birdhilal, are not corroborated with the medical-evidence Exhibit P-22, the injury-report of Rameshwar, and Exhibit P-21, the injury-report of Birdhilal and Exhibit P-56 and Exhibit P-59, the X-ray reports of Rameshwar and Birdhilal, and in absence of corroboration therewith of the statements

of the prosecution witnesses PW-1 Rameshwar and PW-2 Birdhilal, the prosecution case becomes doubtful and appellants have wrongly been convicted on the basis of the testimony of both injured persons, particularly when their statements were self-contradictory.

It is further contended that the medical-report, in fact, has falsified the entire prosecution case and in support of his submissions he referred the statements of PW-1 Rameshwar and PW-2 Birdhilal, who specifically stated that PW-1 was riding the scooter and Birdhilal was sitting on the back seat thereof. The gunshot injury was inflicted from the back and Birdhilal did not sustain any injury and Rameshwar could not have sustained injury in the facts and circumstances of the present case. Therefore, it is contended on behalf of the accused-appellants that the prosecution has failed to prove the case against the accused-appellants beyond all reasonable doubts and the learned trial court has committed a serious illegality in convicting and sentencing the accused-appellants and, thus, they are liable to be acquitted.

The learned counsel for the accused-appellant lastly contended that the accused-appellants remained in jail during the trial of the case for some time and also since the date of the judgment of the trial court

i.e. 30.1.2004 they are in jail continuously except accused Bhola Shankar, whose sentence of imprisonment was suspended by this Court on 9.3.2007, therefore, the appellants have already remained in jail for about 3 years and 7 months, and in case this Court does not agree with his submissions to acquit the accused-appellants then at least their case for reduction of sentence be considered and their sentence of imprisonment may be reduced to a period of imprisonment already undergone by them.

The learned Public Prosecutor, on the other hand, supported the judgment of the trial court and contended that the trial court has considered the prosecution evidence, in detail, and has recorded a finding that the prosecution has proved the case against the accused-persons beyond all reasonable doubts and there is no merit in the appeal filed by the appellants and the same be dismissed.

I have considered the submissions of the learned counsel for both the parties and minutely scanned the impugned judgment and the record of the trial court.

Before considering the prosecution evidence in detail it will be appropriate to discuss the case law referred on behalf of the appellants.

In **Marudanal Augusti v. State of Kerala – 1980 Cri.L.J. 446 (SC)**, the Hon'ble Apex Court observed that if FIR is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence, then the entire fabric of the prosecution case would collapse.

In **Hakumat Rai Vs. State of Rajasthan – 1987 Cr.L.R. (Raj.) 718**, the Division Bench of this Court held that non-production of that report, which was lodged at outpost and which was conveyed to the S.H.O., is fatal to the prosecution.

In **Raghunath Vs. State of Haryana and Another – (2003) 1 SCC 398**, the Hon'ble Apex Court observed that it is unusual that though two police stations fell on the way from the village, in which the occurrence had taken place, to the hospital, but the complainant party did not stop at the two police stations and proceeded straight to General Hospital. In the ordinary circumstances, it is quite imperative that the complainant party could have stopped at the police station, sought necessary help from the police station and also given first-hand information to the police. The injuries suffered by the complainant party were

simple in nature except that of the deceased. Therefore, there are no mitigating circumstances for not reporting to the police station at the first hour especially when the police stations are on the way to General Hospital.

In **Sudhir and Another Vs. State of Madhya Pradesh** – **AIR 1985 SC 515**, the Hon'ble Apex Court considered the statement of sole victim and found number of infirmities in his evidence and further that his statement was not corroborated with the medical evidence also. The Hon'ble Apex Court held that the conviction on the basis of such evidence, is unsafe and the order of conviction passed by the courts below was set-aside.

In **Chhita and Another Vs. State of Rajasthan** – **1987 (Supp) SCC 639**, the Hon'ble Apex Court granted the benefit of doubt to the accused-persons on the basis of subsequent conduct of the sole eye-witness and various statements made by him during investigation and trial in a case where injured witness sustained 21 incised wounds. Para 3 of the judgment is reproduced as under:-

> “3. After giving our careful consideration, we find that the prosecution has not come to court with the true story and the conduct of PW 6

> leaves considerable doubt in our minds as to what really happened. In our opinion the appellants are entitled to the benefit of doubt. We set aside the conviction and sentence and allow this appeal. The appellants need not surrender. Their bail bonds are discharged."

In **State of U.P. Vs. Moti Ram and Others** – **(1990) 4 SCC 389**, the Hon'ble Apex Court was considering an appeal against an order of acquittal where 13 persons were murdered in broad daylight in gruesome and ghastly manner, the Hon'ble Supreme Court held that the prosecution story is so inextricably mixed up with falsehood that separation of truth from falsehood is not possible. The prosecution evidence as a whole is unworthy of credence. The Apex Court did not interfere in the order of acquittal passed by the High Court on a proper appraisal of evidence.

After considering the case law cited at the Bar, as referred above, now I would like to discuss the evidence of the present case.

Exhibit P-1 is the 'parcha bayan' of injured Rameshwar recorded by the S.H.O., Kotwali - Bundi, on 29.9.1996, and on that basis F.I.R. No.309/1996 (Exhibit P-27) was registered at the Police Station - Taleda, District - Bundi. There is no other F.I.R. or

information or report on the record.

There are two injured persons in the present case, namely, Rameshwar and Birdhilal, who have been examined as PW-1 and PW-2. PW-1 Rameshwar stated before the trial court that the report of the incident was lodged by Mohan at Police Station - Taleda; his statement was recorded at Kota. His signature on Exhibit P-1 was obtained at Kota. His statement was not recorded at Police Station - Taleda. He became unconscious at Bundi. He was brought by the police from the place of incident. Mohan was also accompanied with police. When he was brought by Mohan, he was in sense and the police was also accompanied. Mohan told him that he had already lodged report and he has to go to Hospital at Bundi. They had stayed at Taleda for about 2-3 hours, but they did not go to Police Station.

PW-2 Birdhilal, who was sitting at the back seat of the scooter with PW-1 Rameshwar, stated that his brother Mohanlal went to Bardha Gaon Chowki and informed at Control Room. The Jeep of the Police Station, Taleda, was with them and his brother and they were brought at Hospital at Bundi. The statement of his brother was recorded in the Hospital at Bundi.

PW-3 Smt. Shanti Bai stated that Mohanlal came

with the police personnels to take Rameshwar and Birdhilal to Hospital. She stated that her husband Mohanlal went to Bawdi Police Chowki and lodged a report at Police Station, Taleda.

PW-4 Mohanlal stated that he immediately went at Police Chowki of Bawdi to report the matter. Thereafter he telephoned at Taleda Police Station. He came to Lamba-Peepal from Bawdi Chowki where S.H.O. Ram Narain met him. He admitted that he lodged the report at Police Station orally.

The above statements of PW-1 Rameshwar, PW-2 Birdhilal, PW-3 Smt. Shanti Bai and PW-4 Mohanlal make it clear that soon after the alleged incident Mohanlal went at Bawdi Police Chowki and lodged a report at Police Station Taleda but the said report has not been produced and exhibited in the case by the prosecution. Exhibit P-1, 'parcha bayan' was recorded by S.H.O., Kotwali, Bundi at General Hospital, Bundi, whereas Rameshwar PW-1 says that he gave his statement at Kota and he put his signature on Exhibit P-1 at Kota. It appears, after appreciating the prosecution evidence referred above, that a report of the incident was immediately lodged by Mohan but the same has been withheld by the prosecution and the prosecution has not come with clean hands before the court. The true

version of the incident has not come before the Court and it creates serious doubt on the prosecution case. The original report lodged by Mohan has been withheld and Exhibit P-1 'parcha bayan' has been prepared subsequently and, as laid down by the Hon'ble Supreme Court in the case of Marudanal Augusti v. State of Kerala – 1980 Cri.L.J. 446 (SC), if FIR is held to be fabricated then the entire prosecution case would collapse.

It is also relevant to mention that defence has examined DW-1 and DW-2. DW-2 is the Station House Officer of Police Station, who stated that he initiated proceedings against injured Rameshwar and Birdhilal, who were found to be history-sheeter. He has placed on the record the relevant documents i.e. history-sheet of injured Rameshwar and Birdhilal, which were marked as Exhibit D-5 and D-5A, thereby it is clear that number of cases were registered and pending against them and they were fully aware about procedure to be adopted in the case. Both injured admitted that they had stayed for about 2 to 3 hours at Taleda and there was Police Station also but still they did not lodge the report. They stated that report had been lodged by their brother Mohan, which has not been placed on record. The F.I.R. (Exhibit P-27) has

been registered on the basis of 'parcha bayan' (Exhibit P-1) of Rameshwar, wherein 15 persons were named. The challan was filed against 17 persons. The trial court itself found prosecution case as false against 11 persons who have been acquitted. The place of recording 'parcha bayan' (Exhibit P-1) is also doubtful. The above admitted facts have created serious doubt on the prosecution case.

So far as another submission of the learned counsel for the appellant that there was no occasion for the accused to go at the place of occurrence as it was not on the way, is concerned, PW-1 Rameshwar has admitted that the house of Ghasi is situated at the place of incident. The site-plan Exhibit P-2 was prepared in the case, which shows that place of occurrence is far-away from the main road. It was not a matter of routine that injured persons would have gone there without any premeditation of mind. Either they did not go there at all or, in case they went there, they were the aggressors as the incident has taken place at the place belonging to accused-party, which was not on the public way but it was far-away from the main road and the same is proved from the site-plan prepared in the case, which has been proved by the prosecution evidence also. PW-1 has

specifically admitted in his statement that the incident took place in or near the house of Ghasi. PW-2 Birdhilal has admitted that there is no other way to go from the house of Ghasi. PW-4 Mohanlal has also admitted that the incident took place at the place belonging to accused Ghasi.

The statements of injured Rameshwar and Birdhilal were also recorded by a Judicial Officer, which have been produced and exhibited in the case as Exhibit P-63 and Exhibit P-64, respectively, and I have considered their those statements and found that the statements given by PW-1 Rameshwar and PW-2 Birdhilal before the trial court are not corroborated with their earlier statements recorded on 29th September, 1996, itself. Number of questions were put to PW-1 Rameshwar and PW-2 Birdhilal in their cross-examination about their statements Exhibit P-63 and Exhibit P-64 and it is clear that number of contradictions and improvements were found therein.

Exhibit P-21 is the injury-report of Birdhilal. He sustained four injuries by blunt object. Injury No.3 was simple in nature. For Injury No.1, 2 and 4 X-ray was advised. Exhibit P-59 is the X-ray report of Birdhilal and no bone injury was seen. Exhibit P-22 is the injury-report of injured Rameshwar, who sustained

four injuries including two injuries No.1 and 2 by gunshot, which were grievous in nature by firearm. Injury No.1 was on the back of right Thoracic Wall. Exhibit P-56 is the X-ray report of Rameshwar and no bone injury was seen.

After considering the statements of PW-1 Rameshwar and PW-2 Birdhilal, it appears that their statements are self-contradictory in nature and the same are not corroborated with the medical-evidence also. Their evidence has been discussed in detail above, which shows that there are serious infirmities in the prosecution evidence including the statements of injured eye-witnesses PW-1 Rameshwar and PW-2 Birdhilal. The first report lodged by Mohanlal has been withheld by the prosecution. The true version of the prosecution case has not come before the Court.

Exhibit P-1, 'parcha bayan' of Rameshwar was recorded at Kota as per the statement of PW-1 Rameshwar whereas it shows that it was recorded at General Hospital, Bundi, by S.H.O., Kotwali - Bundi. F.I.R. (Exhibit P-27) has been registered on the basis of 'parcha bayan' (Exhibit P-1). The incident has taken place at the place of accused-persons as admitted by PW-1 Rameshwar and PW-2 Birdhilal, both, that the incident took place at the house of Ghasi,

the accused. The place of incident i.e. the house of Ghasi was not on the way and it appears that the injured persons came deliberately at the place of occurrence and they appear to be aggressors. The medical-report also falsifies the prosecution story.

So far as revision filed by injured Birdhilal against acquittal of 11 accused-persons, is concerned, I have concluded the matter with the finding that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and in these circumstances nothing survives to be decided in the criminal revision as the entire prosecution case is found to be doubtful. In these circumstances, there is no merit in the revision petition and the same is liable to be dismissed. Accordingly, the revision petition stands dismissed.

In view of the above reasons and discussion, I am of the view that the prosecution has failed to prove the case against the accused-appellants beyond all reasonable doubts and they are entitled to get benefit of doubt. The learned trial court has committed serious illegality in convicting the accused-appellants, therefore its finding cannot be allowed to be sustained.

Consequently, the appeal is allowed. The

impugned judgment and order passed by the trial court is set aside. The accused Bhola Shankar is on bail and he needs not surrender and his bail-bonds are discharged. The accused-appellants Ram Bharos, Ram Charan, Prabhu Lal, Ghasi Lal and Nand Lal @ Nanda are in judicial custody and they may be set at liberty forthwith, if their custody is not required in any other case.

(Narendra Kumar Jain) J.

//Jaiman//